# 14th Annual Child Support Training Conference

San Francisco Airport Marriott September 28 to October 1, 2010



For Child Support Commissioners, Family Law Facilitators, Title IV-D Administrative and Accounting Staff, Paralegals, and Court Clerks



# TAB H

# Case Law Update Hon. JoAnn Johnson, Hon. Patrick Perry,

and Ms. Lollie A. Roberts









## IRMO Richardson

- Default disso judgment is entered,
- Trial court declines to make child custody or support orders because the child's home state is Japan
- W appeals

# IRMO Richardson

#### Reversed and remanded:

- Both UCCJEA and UIFSA use the same definition of home state, however...
- UIFSA jurisdiction is not limited to a child's home state, unless a petition has already been initiated in that jurisdiction.

# IRMO Schopfer

#### Case History:

- 1990 C is born
- 1996 Disso judgment entered between M and F
- M remarried
- 2004 F ordered to pay child support to M

# IRMO Schopfer

#### 2006:

- M dies;
- F stops paying child support;
- SF seeks custody of C and is awarded joint custody with F;
- F fails to pursue actual parenting time with C

# IRMO Schopfer

#### 2007:

- DCSS seeks support from F at SF's request;
- F agrees to guideline support and an order is entered;
- SF enrolls C in Oregon boarding school with F's consent

# IRMO Schopfer

#### 2008:

- F seeks to terminate child support order because:
  - FC §3951 says a parent is not obligated to pay child support to a third party caregiver unless he agrees to do so
  - C is 18 and no longer living at home

# Family Code §3951 (a) A parent is not bound to compensate the other parent, or a relative, for the voluntary support of the parent's child, without an agreement for compensation.



# IRMO Schopfer

- F's actions demonstrated agreement to pay support to SF
  - request for guideline support order
  - lack of objection to SF's request for support
  - failure to file a timely appeal from support order

# IRMO Schopfer

- Child support continues to age 19 if C is full time high school student
- Facts demonstrate that SF continues to be the custodial party
  - SF had continuing contact with C and her counselor
  - C spent vacation periods at SF's home
  - C intended to resume living with SF after graduation

### IRMO Zimmerman

#### Case History:

- 1997 Disso judgment entered
- 2003 Child support modified
- February, 2006 April, 2008 various motions are filed and review hearings held regarding child support

### IRMO Zimmerman

- November, 2007 W files declaration alleging fraud and perjury by H with respect to income information he provided and which was used to calculate child support
- June 10, 2008 W filed motion to set aside child support order due to fraud and perjury

# IRMO Zimmerman Trial Court denied motion W appealed

# IRMO Zimmerman

#### **Affirmed**

- FC §2122, which has a one year statute of limitation for actions based upon fraud or perjury, only applies to judgments
- The requested relief was time barred by FC §3691, which has a six month statute of limitations for actions based on fraud or perjury
- No extrinsic fraud was alleged, so not eligible for equitable relief

# Family Code §2122

- The grounds and time limits for a motion to set aside a judgment, or any part or parts thereof, are governed by this section and shall be one of the following:
- (a) ... An action or motion based on fraud shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the fraud.
- (b) Perjury. An action or motion based on perjury in the ... current income and expense statement shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the perjury.

(emphasis added)

# County of San Diego v. Gorham

#### Case History:

- 1997 Case filed by DCSS
- 1998 Default judgment entered
  - Based upon proof of personal service signed by process server David Lopez
  - Service allegedly occurred at a residence in San Diego on May 8, 1998

## County of San Diego v. Gorham

#### 2002:

- Gorham met with a case worker on another case and established his periods of incarceration, including February through October, 1998
- The caseworker told Gorham about an earlier case on which aid had closed and referred him to the FLF to explore set aside options

# County of San Diego v. Gorham

#### April, 2008

 Gorham filed a motion to set aside the 1998 judgment and dismiss the case

# County of San Diego v. Gorham

#### **Trial Court Findings:**

- The judgment was void for lack of personal service
- The false proof of service constituted extrinsic fraud
- Traditional equitable set aside relief for child support orders was statutorily preempted by FC §3691

# Family Code §3691

The grounds and time limits for an action or motion to set aside a support order, or any part or parts thereof, are governed by this section and shall be one of the following:

 (a) Actual fraud ... An action or motion based on fraud shall be brought within six months after the date on which the complaining party discovered or reasonably should have discovered the fraud.

# County of San Diego v. Gorham Motion denied Gorham appealed

# County of San Diego v. Gorham

#### Reversed and Remanded

- Once a judgment is found to be void, no action or inaction by the parties can render it valid
- FC §3691 was enacted to expand avenues of relief from child support orders in default judgments obtained without proper notice or on mistaken identity
- Once the trial court found the judgment to be void based upon extrinsic fraud, it was required to dismiss the case

## County of San Diego v. Gorham

- FC §17432 imposes a duty on DCSS to determine if an order based upon presumed income is eligible for set aside within three months of the first collection.
- If a basis for set aside exists, DCSS shall bring the motion for relief
- First collection from Gorham's unemployment occurred in July, 2002

# Family Code §17432

- (a) In any action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, the court may, on any terms that may be just, set aside that part of the judgment or order concerning the amount of child support to be paid. This relief may be granted after the six-month time limit of Section 473 of the **Code** of Civil Procedure has elapsed, based on the grounds, and within the time limits, specified in this section.
- (b) This section shall apply only to judgments or orders for support that were based upon presumed income as specified in subdivision (d) of Section 17400 and that were entered after the entry of the default of the defendant under Section 17430. This section shall apply only to the amount of support ordered and not that portion of the judgment or order concerning the determination of parentage.

# Family Code §17432

- (f) A motion for relief under this section shall be filed within one year of the first collection of money by the local child support agency or the obligee. The one-year time period shall run from the date that the local child support agency receives the first collection.
- (g) Within three months from the date the local child support agency receives the first collection for any order established using presumed income, the local child support agency shall check all appropriate sources for income information, and if income information exists, the local child support agency shall make a determination whether the order qualifies for set aside under this section. If the order qualifies for set aside, the local child support agency shall bring a motion for relief under this section.

## H.S. v. Superior Court

#### Case History:

- Married Chinese couple were living apart during the work week?
- W had an affair with SG and became pregnant
- W told SG about pregnancy and later broke up with him when he suggested abortion
- W separated from H

# H.S. v. Superior Court

#### Case History:

- SG came to hospital when C was born and signed POP declaration;
- W did not have translator and did not understand POP, but signed anyway
- W translated POP and rescinded within 60 days of original signatures

# H.S. v. Superior Court

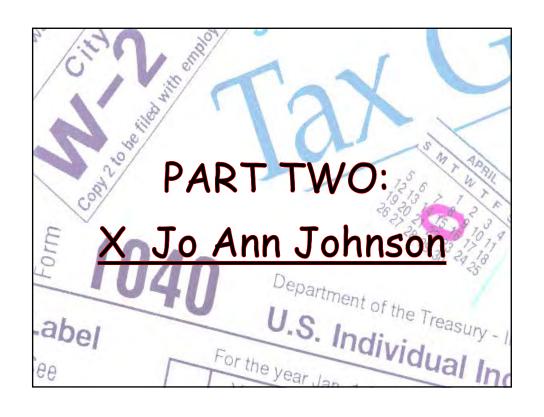
- W & H reconciled and H held child out as his own
- SG filed UPA action
- W moved to dismiss and to set aside POP declaration
- Trial Court sets aside POP and ordered genetic testing
- W filed petition for writ

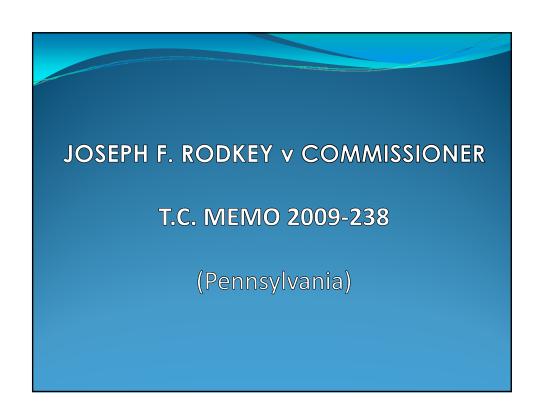
# H.S. v. Superior Court

Writ issued directing court to vacate order for genetic testing

- Policy reasons favoring POP declarations do not trump the marital presumption or FC §7611(d) presumption of W's husband
- A POP Declaration signed by a married woman is voidable
- Absent the POP, SG had no standing to challenge H's marital presumption







IRS issues a deficiency against H. for 2006 = \$11,009 + \$2,201 as an 'accuracy-related' penalty.

IRS disallowed payments H made to W which he characterized as tax-deductible alimony based on parties' MSA.

H says – I did the same thing in 2005 and IRS said it was OK.

MSA incorporated into Final Judgment = H pays to W \$3,200 per month.

"Although the entire amount ...shall be tax deductible to H and includable to W, ... the allocation...is \$1700 is child support and \$1500 is alimony."

"... or upon W's cohabitation, remarriage or death, alimony shall terminate."

IRS says only the part designated as alimony is deductible.

Husband argues collateral estoppel:

In 2005, he deducted the entire amount of support paid.

IRS came after him – can't deduct the part allocated as child support.

IRS issued a determination that he owed nothing in 2005 allowing the deduction.

IRS says: Even if we allowed the deduction in 2005 we don't have to allow it for 2006.

Tax Court says collateral estoppel does not apply – the 2005 issue was not litigated and besides ..The IRS "may take inconsistent positions to protect the public fisc"

# Tax Court looks at IRS Code Section 71(b)(1) defining alimony:

- ✓ Received pursuant to divorce decree
- √Not deemed non-deductible to payor
- √ Parties not in same household
- >No liability to make payment after death of payee spouse

Failed on this last requirement because the payments for child support, i.e. the \$1700 do not terminate on Wife's death only the alimony portion terminates.

IRS says – if this isn't enough, we have another theory:

The \$1700 is designated as child support and therefore it is not deductible.

"It appears that the parties...created a deliberate ambiguity in order to achieve two purposes: one relating to child support and one relating to tax treatment. It has long been the rule that the labels attached by the parties to an agreement... are not controlling for Federal tax purposes."



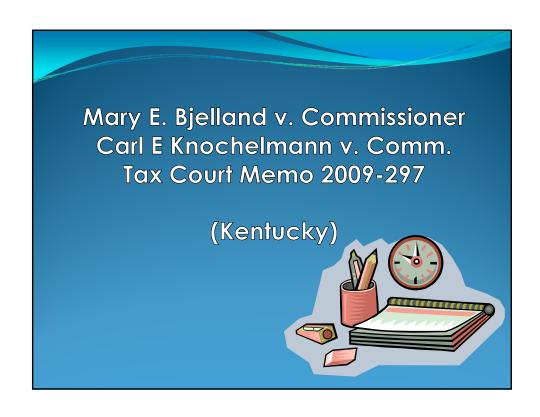
Penalty – Husband says, well, I just relied on what the IRS did in 2005 so I shouldn't have to pay the penalty.

And besides, I may be an attorney but I'm not a <u>tax</u> attorney.



"Petitioner's explanations do not demonstrate an honest misunderstanding of fact or law that is reasonable in light of his experience, knowledge and education."

Penalty applies.



IRS assessed a deficiency against both Mother and Father for tax year 2004.

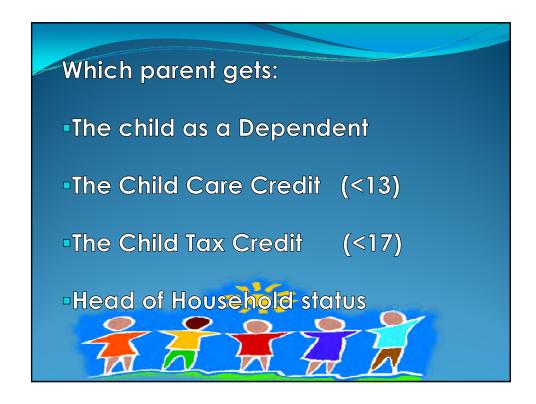
\$1,474 for mother \$2,092 for father

Both claimed child on separately filed tax returns.

#### Parties were never married

Shared custody on a complicated schedule which resulted in Mother having the child 173 hours (8 nights) and Father having the child 163 hours (6 nights), bi-weekly.

Both parents claimed they are the custodial parent.



Dad argues he provided more support because he had the child during waking hours.

Mom argues child lived with her for greatest part of year.

IRS says: add up the hours, kid with mom more hours, mom is custodial parent.

Tax Court focused on Section 152(e) which defines the custodial parent as

"having custody for a greater portion of the calendar year" notwithstanding that the other parent may have contributed more to the child's support than the custodial parent.

Tax court agreed that Mother is the custodial parent by either the hours or number of nights in her custody.

She gets to claim child for all purposes.

Father's 'waking hours' argument is unworkable and unpersuasive.

John Douglas Thomas v. Comm. Tax Court Memo 2010-11 (Arizona)

Stephen S. Gessic v. Comm. Tax Court Memo 2010-88 (Ohio)

Leslie and Linda Himes v. Comm. Tax Court Memo 2010-97 (Nebraska) Thomas: MSA said Dad gets to claim child in even years if current on his support.

<u>Gessic</u>: MSA said Dad gets to claim both children if he is current on support and Mom makes <\$20K, otherwise, he claims one child.

<u>Himes</u>: Modified order said Dad gets to claim both children if current on his support.

In all cases, the Mothers were the custodial parents.

All required the Mothers to execute IRS form 8332.

In all cases, the Mothers didn't and claimed the child/ren.

Fathers attached the MSA / order to prove entitlement to the deduction.

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In all the cases the Tax Court found that the MSA / order did not conform to the substance of Form 8332 and meet the requirements of 152(e)(2).

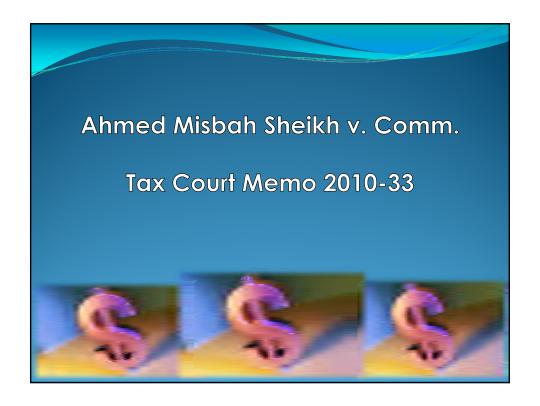
### 8332 requires the taxpayer to furnish:

- children's names
- years for which the release is granted;
- the custodial parent's dated signature;
- the custodial parent's social security number;
- the non-custodial parent's name and social security number.

The MSA/ orders relied on by the Father's did not contain all the required information.

The releases cannot be conditional.

Even if the Fathers complied with the terms of the MSA / order, the exemption was disallowed.



Father paid >\$12,000 in support for 2005 + health insurance.

Mother and children lived with her parents entire year.

Maternal Grandparents claimed children on taxes.

Father tries to do so and assessed a deficiency of \$4,635.

Issue is who actually supported the children – Father or Grandparents?

Father testifies that MGPs "have so much excess money ...they don't have any problem..."

He could not prove he had provided more than half the support for the children.



#### Father has 4 children.

3 with Mo #1- children live with him.
1 with Mo #2 - lives with child & mom.

In 2006 he claimed 1 child from Mo#1 and the child with Mo. #2 as well as Head of Household status.

IRS disallows all.

#### As to the child with Mo #1:

- >Fa and Mo #1 lived apart for > 6 months
- >They supported the child
- >Child lived with him > half the year
- > Result: Child is a qualifying child

Child is < 17 = child tax credit

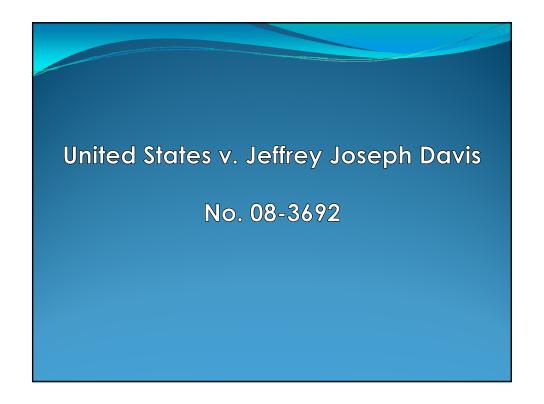
His home is principal place of abode
for child for majority of year = HH
status

#### As to child with Mo #2:

- >Child (and mother) live with Fa.
- >Mo did not claim child.
- > Fa supported child.

He can claim child, get tax credit and HH status for this child also even though child born in Dec 2006.





Davis convicted by a Federal Court for willful failure to pay his child support obligations.

18 U.S.C. 228(a)(3) and 228(c)(2).

Davis has two girls with Janey who he met in High School. Lived together in a mobile home park. Split when children were 2 & 4.

Janey went to live with her parents on a livestock farm in lowa with the girls.

## History of the case is pretty egregious:

- ▶ Ordered to pay \$723.00 in child support in 2000.
- ► Reduced to \$570 in 2002.
- ▶ Between 2000 and 2008 no support was voluntarily paid by Davis
- ► Arrears of \$52,354.75 as of July 2008.

Davis is indicted by a Federal Grand Jury and prosecuted for willful failure to support.

Found guilty.

Appeals → Failed to prove failure to pay was 'willful'.

Davis claims the government had to prove that he did have the ability to pay the *entire* amount of past due support.

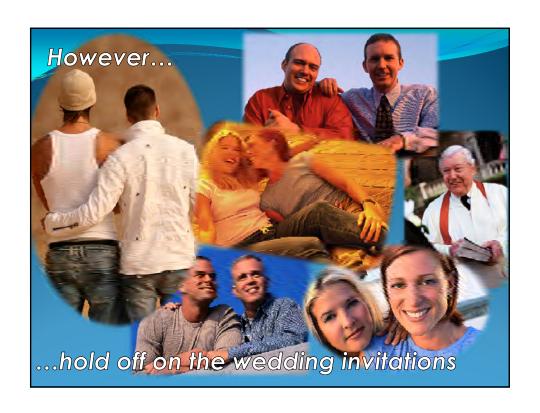
Court agreed with the 2<sup>nd</sup> and 5<sup>th</sup> circuit which had already addressed this issue: the government had only to show that the defendant was able to pay *some* portion of his past due support.

Court affirms the conviction finding that there was sufficient evidence for the jury to find Davis was capable of paying more child support than he did.

Kristin M. Perry, et.al. v. Arnold Schwarzenegger et.al.

(Proposition 8 Challenge)

On August 4, 2010, Chief Judge Vaughn Walker ruled that Proposition 8 violated the Due Process and Equal Protection clauses of the 14<sup>th</sup> Amendment to the U.S. Constitution.



On August 16, 2010, the Ninth Circuit Court of Appeals ordered the judgment stayed pending appeal.

Appeals are calendared for oral argument during the week of December 6, 2010 in San Francisco.



If the 9<sup>th</sup> Circuit upholds the decision, the U.S. Supreme Court is likely to take the case---although the process may take years.

#### Family Code 308(c):

Notwithstanding any other provision of law, two persons of the same sex who contracted a marriage on or after November 5, 2008, that would be valid by the laws of the jurisdiction in which the marriage was contracted shall have the same rights, protections, and benefits .....as are granted to and imposed upon spouses with the sole exception of the designation of "marriage."

What is this '3<sup>rd</sup>' category? What if they want a divorce in California?

# **CASE LAW UPDATE**

PATRICK J. PERRY Commissioner San Luis Obispo

# **BISCARO V STERN** (2010) 181 CA4th 702

- REQUEST FOR ACCOMODATION
  - DANIELLA B. REQUESTS DVRO--- FIGHT ONE MONTH AGO
  - MARC S. APPEARS AT TRO HRG---REQUESTS ACCOMODATION OF NEUROPSYCH DISABILITIES

- MARC GIVES COURT COPY OF WRITTEN REQUEST FOR ACCOMODATION FILED IN ANOTHER PROCEEDING--- CRT ORDERS IT INCORPORATED IN FILE
- DENIED EX PARTE RELIEF --- SET FOR HEARING

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   IT INCORPORATED IN FILE
- DENIED EX PARTE RELIEF --- SET FOR HEARING
- COURT PROMISES MARC WILL ISSUE WRITTEN RULING ON REQUEST FOR ACCOMODATION---
- FAILS TO DO SO

■ MARC FTA @ HRG --- TC WAITS 90 MINS

- MARC FTA @ HRG --- TC WAITS 90 MINS
- TC NOTES REQUEST FOR ACCOM ---RULES ON MERITS OF OSC---- DVTRO
  GRANTED
- 75 DAYS LATER— REQUEST FOR RECONSIDERATION FILED

- MARC----
  - COULDN'T MEANINGFULLY PARTICIPATE w/o ACCOMODATION
  - NEVER RULED ON MY ACCOM REQUEST
- DANIELLA---
  - UNTIMELY
    - YOUR RULING?

- REVERSIBLE ERROR AS MATTER OF LAW
- TC MUST RESPOND IN WRITING
- SILENCE IS NOT DENIAL
- PUBLIC POLICY— TO ACKNOWLEDGE AND ADDRESS DISABILITIES OF PEOPLE WHO COME BEFORE COURT
- EQUAL AND FULL ACCESS FOR ALL

- MAY DENY FOR ONLY 3 REASONS:
  - 1. APPLICANT FAILS TO FOLLOW CRC 1.100
    - WRITTEN OR ORAL REQUEST
    - DESCRIPTION ACCOMODATION & IMPAIRMENT
    - TIMELY ORDINARILY 5 DAYS ADVANCE

- 2. UNDUE FINANCIAL OR ADMIN BURDEN ON COURT
- OR
- 3. ACCOMODATION WOULD FUNDAMENTALLY ALTER NATURE OF SERVICE, PROGRAM OR ACTIVITY

- HERE---
  - REQUEST DESCRIBED ACCOMODATION AND DISABILITY - A NEUROPSYCHOLOGIST TO ASSIST WITH MEMORY AND COMMUNICATION
  - NO UNDUE BURDEN--- LIKE READERS OR INTERPRETERS
  - NO FUNDAMENTAL MOD OF COURT SRVC'S

# ■ PREJUDICE REQUIRED?

- PREJUDICE REQUIRED?
  - NO
  - DENIAL OF ACCOMODATION IS A STRUCTURAL ERROR
  - SINCE ACCOMODATION EXISTS TO ASSIST A PERSON TO <u>MEANINGFULLY PARTICIPATE</u>
  - DENIAL IS PREJUDICIAL PER SE

# IRMO MACMANUS (2010) 182 CAL. APP. 4<sup>TH</sup> 330

- 11/02 STIPULATION
  - 1. DVRO
  - 2. CP BUSINESS (PDS) → 3K/MO EACH
  - $-3. H \rightarrow W $1,145 / MO CS$

■ H VIOLATES DVRO → JAIL → ???

- H VIOLATES DVRO → JAIL → ???
- RECONCILE 5/03 → 8/04
- W FILES OSC 10/04 CS, SS, AF, PROP
- W SAYS PDS SETTLED CASE IN 03

   \$17 K /MO PAYMENTS→ W WANTS AS SECURITY FOR CS

- H ARRESTED FOR DV
- INCARCERATED 10/04 → 2/07
- STIP W WILL GET NOV AND DEC PAYMENTS ON LAWSUIT AS SECURITY
- HEARING CONTINUED TO 5/08
  3 ½ YEARS !!!!!!!!

- TRIAL
  - 1. FUTURE CS \$377
  - 2. NO SS--- W VICTIM OF SERIOUS DV; H TOO POOR TO PAY
  - 3. CS ARREARS ADJUSTED
    - NO CS WHILE RECONCILED
    - ARREARS → \$67,000

- TC INDICATES PLANS TO DIVIDE THE \$130,950 IN ATTY TRUST EQUALLY
- W SAYS PRIOR BENCH OFFICER ORDERED \$20K RELEASED TO HER "AS CS, SUBJECT TO REALLOCATION"
- H SAYS CREDIT AGAINST CS ARREARS.
- TC I'M INCLINED TO REALLOC AS SS

- ON APPEAL H SAYS ABUSE OF DISCRETION TO REALLOCATE TO SS
- NOTHING TO INDICATE CONSIDERATION OF NEED AND ABILITY TO PAY

- CRT APP: FC 4320 ONLY PERMANENT SS; TEMP SS IS BROAD DISCRETION
  - NO ABILITY TO PAY WHILE JAILED
  - T/C REQUIRED TO CONSIDER DV ON TEMP SS
  - TEMP SS MAY BE RETROACTIVE TO DATE OF FILING OSC

- TEMP SS- NO STATUTORY STANDARD
- "The trial court should tailor its award on the basis of equitable rights of the parties..." IRMO Cheriton
- W's TESTIMONY THAT LOST PDS, 2 HOUSES → INFER NEED FOR SS
- TC SAYS RETRO SS ON EQUITABLE GROUNDS

- CRT APP
- WHILE NO SS WHILE IN JAIL, TC
  DIDN'T HAVE TO REDUCE ARREARS
- W CLEARLY DV VICTIM
- TC BROAD DISCRETION MAY ALLOCATE CS LUMP SUM PAYMENT TO SS EVEN WHERE NO SS ORDER EXISTED

- REMEMBER THE OSC PENDING FOR
   3 ½ YEARS--- COULD BE RETRO TO
   THEN--- AND H OUT OF JAIL FOR 17
   OF THOSE MONTHS
- TC OKAY WITH "I ALREADY GAVE YOU A LOT OF CREDIT"
- TC MUST CONSIDER DV ON TEMP SS

■ TC AFF'RMD WHERE IT ALLOCATED
THE ENTIRE \$20K PREVIOUSLY
ADVANCED TO W AS CS SUBJECT TO
REALLOCATION TO SS

# IRMO KACIK (2009) 179 Cal.App.4th 410

- FC 4326
  - IF CRT HAS JURIS TO ORDER SS, and
  - COMPANION CS ORDER **IS** IN EFFECT
  - TERMIN OF CS MAY BE BASIS FOR MOD OF SS

- 16 YR MARRIAGE
- 1 CHILD, AGE 11 AT DISSO IN 1999
- JUDGMENT CS \$1,125 / MO; SS \$1,625 WITH STEPDOWN TO 0 AFTER 7 YEARS WITH RESERVATION
- CS ENDS AUG 2006 (CHILD 18)
- SS MOD OSC FILED 2-15-08 (PRECISE DATE OF STEPDOWN TO ZERO)

#### AT HEARING

- W INCOME \$2,580 TC → "SUFFICIENT EFFORT"
- H INCOME \$13,907
- MARITAL STD OF LIVING -- \$5,668 EACH

H ARGUES---NO CHANGE OF CIRC

TC→ CHILD NO LONGER LIVES WITH HER IS THE CHANGE OF CIRC AND FC 4326

#### CRT APP

- FC 4326 WAS LEGISLATIVE RESPONSE TO <u>IRMO LAUTSBAUGH</u> AND INTENDED TO OVERTURN IT
- WHERE HAVE HIGH CS ORDER; SS IS NECESSARILY ARTIFICIALLY LOW AS COMPARED TO WHAT IT WOULD BE WITHOUT THE CS
- UNFAIR TO LEAVE SUPPORTED SPOUSE WITH SUBSTANDARD SS AND NO CHANCE TO MOD

■ SO... WHAT IS THE MEANING OF THE WORD "IS"



- WHAT IS MEANING OF "A COMPANION CS ORDER IS IN EFFECT"
- EXTREME VIEW:
  - CS ORDERS ARE IN EFFECT UNTIL TERMINATED BY COURT OR TERMINATES BY OPERATION OF LAW (18, 19 +OUT OF HS, ETC

WOULD REQUIRE OSC PRE TERMINATION TO ENABLE MOD AFTER TERMINATION

- EXTREME VIEW AT ODDS WITH THE STATUTE
- FC 4326 INTENDED TO ALLOW EX TO MAKE THE CASE FOR MODIF OF SS BECAUSE OF THE TERMINATION OF CS
- THE LITERAL VIEW WOULD REQUIRE A MOTION BEFORE CHANGE OF CIRC

- INFO TC NEEDS TO DETERMINE MOD WOULD BE UNAVAILABLE
- SUPPORTED SPOUSE'S INCOME/EXP
- IS CHILD STILL LIVING AT HOME
- NEEDS OF SPOUSE AFTER CHILD MOVED
- ABILITY OF SUPPORTED SPOUSE TO WORK W/O CHILD REARING RESPON.

- MODIFICATION MUST BE BROUGHT WITHIN A "REASONABLE PERIOD"
- REASONABLE CONTEMPORANEOUSNESS
- HERE OSC WAS NOT IN IMMEDIATE WAKE OF CS TERMINATION—RATHER IN VIEW OF IMPENDING REDUCTION OF SS
- 17 MONTHS LATER WAS TOO LATE

## MENDOZA V RAMOS (2002) 182 CAL.APP.4<sup>TH</sup> 680

- DAD FILES MOTION TO MODIFY CS
  - CLAIMS HAS KIDS >50%
  - WANTS INCOME IMPUTED TO MOM

# **MENDOZA V RAMOS** (2002) 182 CAL.APP.4<sup>TH</sup> 680

- DAD FILES MOTION TO MODIFY CS
  - CLAIMS HAS KIDS >50%
  - CLAIMS SHE QUIT WORK
  - WANTS INCOME IMPUTED TO MOM

- MOM RESPONDS
  - ON AFDC
  - IN CAL WORKS
  - IN SCHOOL TO BECOME LVN

- DAD ARGUES PURSUIT OF EDUCATION IS VOLUNTARY
- AND NOT IN CHILDREN'S BEST INTEREST
- WANTS INCOME IMPUTED PER IRMO ILAS

- MOM ARGUES NO IMPUTATION
- CAL WORKS REQUIRES COUNSELLING AND EDUCATION IN LIEU OF FULL TIME WORK
- MOM HAD LOST JOB WHEN
   EMPOLYER MOVED AND HADN'T BEEN
   ABLE TO FIND NEW JOB

- IN ILAS—DAD QUIT WORK AND ENTERED MEDICAL SCHOOL
- CRT HELD—NO RIGHT TO ELIMINATE EARNING CAPACITY AT EXPENSE OF CS SS RECIPIENT. NO RQT OF INTENTIONAL AVOIDANCE
- DAD HERE SAYS---THAT'S MOM

- RULING NO SHOWING OF ABILITY
  TO EARN. NOT SUFFICIENT TO
  DEMONSTRATE THE PARTY
  CONTINUES TO POSSESS THE PRIOR
  WORK SKILLS (IRMO BARDZIK)
- AND HERE—EVIDENCE SHOWS MOM COULDN'T FIND EMPLOYMENT AND WAS FORCED TO SEEK PUBLIC ASSISTANCE

- IMPUTATION OF INCOME TO CALWORKS RECIPIENT CONTRARY TO PUBLIC POLICY
- PARTICIPANT MUST PARTICIPATE IN DESIGNATED ACTIVITIES
  - JOB SEARCH-- UNSUCCESSFUL
  - ASSESSMENT
  - SPECIFIC PROGRAM AND SERVICES

#### ■ IRMO BARRON

- -- "SINCE CALWORKS REQUIRES, WHENEVER POSSIBLE, THAT THE PARENT SEEK OR PREPARE FOR EMPLOYMENT, AN UNEMPLOYED PARENT WHO IS IN COMPLIANCE WITH HIS OR HER CALWORKS PLAN IS, IN EFFECT, IN THE PROCESS OF SEEKING EMPLOYMENT."
- THEREFORE—NO SEEK WORK ORDER

■ REDUCTION OF CS ON BASIS OF IMPUTED INCOME WOULD LEAVE HER WITHOUT THE ABILITY TO COMPLETE THE PROGRAM OR REQUIRE HER TO WORK IN VIOLATION OF PROVISIONS OF CALWORKS THAT ALLOW HER TO RECEIVE THE NECESSARY ASSISTANCE TO SUPPORT THE CHILDREN—NO ABUSE OF DISCRETION IN REFUSING TO IMPUTE INCOME

### IRMO KNOWLES (2009) 178 CAL, APP. 4<sup>TH</sup> 35

- "THOMAS'S BRIEFING ON APPEAL...IS FULL OF THE VITRIOL THAT IS ANATHEMA TO CIVIL AND PROFESSIONAL CONDUCT ESSENTIAL TO THE RESOLUTION OF FAMILY LAW MATTERS."
- "THE JUDGE DIDN'T GET IT *ALL* WRONG." (REPLY BRIEF)

- H EARNING CAPACITY 50,000/YR
- H &W2 CAPITAL GAINS IN 2004 AND 2005 WERE \$3.1 MILLION. THESE FUNDS WERE AT AG EDWARDS.
- TC APPLIED A 4% RATE OF RETURN TO THE 3.1 MIL = \$10,950 /MO
- TC RATE OF RETURN REAL ESTATE WAS \$7,500 /MO

- H ARGUES TC SHOULD ONLY RECOGNIZE ½ THE INVESTMENT INCOME AS IT IS ALL CP
- TC ATTRIBUTE ALL TO H
  - NOT "EARNINGS OF NEW SPOUSE"
  - NO CASE OR STATUTE SAYS PASSIVE EARNINGS SHOULD BE DIVIDED
  - PUBLIC POLICY IS TO MAXIMIZE CS

- CRT APP- FOR H
  - INCOME FROM CP IS CP
  - EACH SPOUSE HAS AN EQUAL, UNDIVIDED INTEREST IN THAT INCOME
  - ONLY ½ OF PASSIVE CP INCOME MAY BE CHARGED TO THE SPOUSE
  - DISTINGUISHED CALCULATING VS COLLECTING CS

- FC 4008 CP MAY BE SUBJECTED TO THE SUPPORT OF THE CHILDREN (COLLECTION)
- BUT MAY NOT BE CONSIDERED IN FULL IN CALCULATING CS
- AS TO STATUTORY AUTHORITY---
  - FC 4057.5 PROHIBITS NEW SPOUSE INCOME WHETHER EARNED OR A RETURN ON INVESTMENT

- PUBLIC POLICY—
- WHEN A STATUTE IS ON POINT---THE PUBLIC POLICY OF THE STATE IS CONTAINED IN THE STATUTE
- RESULT—ONLY ATTRIBUTE ONE HALF OF PASSIVE INCOME OF COMMUNITY

